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# Ombudsman



National Defence and Canadian Forces  
Défense nationale et Forces canadiennes

# Report to the Minister of National Defence

## André Marin Ombudsman

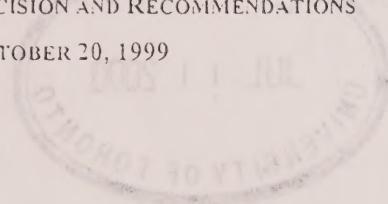
COMPLAINT: ALLEGATION OF CONFLICT OF INTEREST

COMPLAINANT: DR. ERIC SMITH

CASE REFERENCE: 99-424; 99-443

DECISION AND RECOMMENDATIONS

OCTOBER 20, 1999





## Complaint

In August 1970, it was learned that the Canadian government had sent a memorandum of understanding to the Canadian Embassy in Washington, D.C., concerning the Canadian government's interest in the proposed construction of a nuclear power plant at the Bruce Nuclear Generating Station in Ontario, Canada. This memorandum of understanding was signed by the Canadian Minister of Natural Resources, Mr. John G. Diefenbaker, and the Canadian Ambassador to the United States, Mr. John G. Diefenbaker, on August 11, 1970. According to the memorandum, the Canadian government intended to submit a proposal to the Canadian Nuclear Generating Corporation to construct a nuclear power plant at the Bruce Nuclear Generating Station.

The Canadian government's proposal to construct a nuclear power plant at the Bruce Nuclear Generating Station was submitted to the Canadian Nuclear Generating Corporation on August 11, 1970. The Canadian Nuclear Generating Corporation accepted the proposal and began the process of developing the Bruce Nuclear Generating Station. The Canadian Nuclear Generating Corporation has since completed the construction of the Bruce Nuclear Generating Station and is currently operating it.

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## SPECIAL REPORT

### ALLEGATION OF CONFLICT OF INTEREST

The Canadian government's proposal to construct a nuclear power plant at the Bruce Nuclear Generating Station was submitted to the Canadian Nuclear Generating Corporation on August 11, 1970. The Canadian Nuclear Generating Corporation accepted the proposal and began the process of developing the Bruce Nuclear Generating Station. The Canadian Nuclear Generating Corporation has since completed the construction of the Bruce Nuclear Generating Station and is currently operating it.

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#### Summary of the Facts

The Canadian government's proposal to construct a nuclear power plant at the Bruce Nuclear Generating Station was submitted to the Canadian Nuclear Generating Corporation on August 11, 1970. The Canadian Nuclear Generating Corporation accepted the proposal and began the process of developing the Bruce Nuclear Generating Station. The Canadian Nuclear Generating Corporation has since completed the construction of the Bruce Nuclear Generating Station and is currently operating it.

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## Complaint

On August 17, 1999, Dr. Eric Smith contacted the Office of the Ombudsman. Dr. Smith is a medical doctor who served in the Canadian Forces (CF) until July 1998, when he retired . He made several complaints to my 5 Office. This report is issued in regards to one of them, namely the allegation that Captain Klaus Schneider, currently serving with Canadian Forces National Investigation Service (CFNIS), is in a conflict of interest situation, due to his involvement in a current investigation of issues arising out of CF deployments to Croatia in 1993-1995.

10 Dr. Smith is a key witness in critical aspects of the investigation, which includes the alleged destruction of medical documents from the files of members who had served in Croatia. There have been a number of public statements made by individuals, including one witness who has spoken to the NIS, alleging that Dr. Smith gave the order to destroy medical documents which he had placed in CF members' files. One 15 witness was assisted by the DND Public Affairs branch in arranging to make a public statement to the media.

20 Dr. Smith states that Captain Schneider and he had previous dealings when both were serving in Goose Bay in 1995 and 1996. At that time Dr. Smith was the base physician and Captain Schneider was the Wing Military Police Commander. 25 Dr. Smith stated that Captain Schneider was involved in the investigation of an incident, which lead to Dr. Smith being charged and convicted in a court martial in 1996,

25 Further, Dr. Smith alleges that he told Captain Schneider about problems with the 30 documents related to the Croatia deployment, during their tour of duty in Goose Bay in 1995.

## Investigative Process

35 Dr. Smith contacted the Ombudsman on August 17, 1999. Two senior staff members were immediately assigned. They met with Dr. Smith and received a statement from him. They also interviewed Captain Schneider and met with his supervisor, Inspector Russ Grabb. Informal intervention to resolve the issue at this juncture proved unsuccessful. We then formally interviewed Inspector Grabb, who 40 is the officer in charge of the investigation. We have interviewed and spoken to several parties who were present in Goose Bay in 1996.

45 We have reviewed or requested various documents from DND/CF, including the investigative files from Goose Bay, personnel files, and documentation concerning conflict of interest guidelines for CF investigative and other personnel.

50 The separate investigation continues into other matters raised in Dr. Smith's complaint.

## Summary of the Facts

## Summary of the Facts

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This summary is based on our investigation to date.

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On August 17, 1999, Dr. Smith contacted my Office, and spoke with one of my senior staff. Dr. Smith made several complaints, including a complaint that the ongoing CFNIS investigation was unfair and biased and that, accordingly, he had no faith or confidence in its process. One of his reasons for reaching that conclusion was that one of the investigators conducting the investigation was Captain Klaus Schneider. He alleged that Captain Schneider had treated him unfairly when they were posted together in Goose Bay in 1995.

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On August 18, 1999, we received a telephone call from a third party who is a friend of Dr. Smith's and a serving CF officer. He advised that

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He also advised us that Dr. Smith had told him that Captain Schneider was aware of the medical documents, as Dr. Smith and Captain Schneider had discussed them during a heart to heart conversation in 1995 in Goose Bay.

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On August 19, 1999, the investigators assigned to this case met with Dr. Smith. They explained the role and function of the office. They also provided Dr. Smith with a 'waiver of confidentiality'. This document provides the complainant's consent for the Ombudsman to investigate a complaint and to discuss with any party any aspect of the complaint.

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My staff discussed issues of confidentiality in detail. They made it clear to Dr. Smith that, if we did intervene, the very nature of the investigative process precluded us from maintaining confidentiality. Further, we would be thoroughly investigating his allegations, which would mean interviewing all involved parties and getting their side of the story. Dr. Smith advised us he fully understood the process, and signed the waiver.

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At that time, Captain Schneider was the Wing Military Police Commander. In his statement to my investigators, Dr. Smith advised that:

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*I went in and spoke to Captain Klaus Schneider,  
Anyways, this Klaus Schneider...put a significant amount of effort into  
befriending me, and shortly after that I came home from work one day*

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*When I was  
talking to Klaus Schneider, I explained what was going,  
what had happened in Croatia. And he knew all the particulars about*

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*my stress situation, he knew all the particulars about the multiple requests for medical support and he knew about the memorandums, memorandums from Calgary, and that surprised me that he knew that information.*

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In a later interview, Dr. Smith expanded on what he alleged Captain Schneider knew about the memoranda:

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*He knew all the requests I had made, knew about the environmental issues I tried to address and knew the problems around the memos. He never said anything about the memos being shredded.*

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On August 23, 1999, my staff called Dr. Smith and advised him of our intent to begin an investigation into two aspects of the complaints he had brought to us, one of which was the allegation of conflict of interest. We reminded him of the waiver of confidentiality he had signed. Dr. Smith gave his consent for my Office to actively begin an investigation. He also stated that he did not care if our involvement was made public.

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Captain Schneider is currently attached to the Sensitive Investigation cell of CFNIS, and is based in Ottawa. He was interviewed on August 24, 1999. He stated that the investigation into what had occurred in Croatia was divided into four parts. He was the lead investigator in the investigation of the alleged naphtha gas poisoning of retired Warrant Officer Stopford and another individual, and that that part of the investigation, "has absolutely no connection to Mr. Smith".

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He advised that the other aspects of the investigation, that did directly involve Dr. Smith, were being conducted by other CFNIS officers based in the same office as he was located. He stated that there are general investigative meetings held approximately once per week when all available investigators meet, "to pool our information". Captain Schneider stated that he had been travelling for most of the previous three weeks, and had only attended two or three investigative meetings, one of which had occurred the previous day. He stated that he had left the meeting prior to the briefing by the investigator involved in the part of the investigation concerning Dr. Smith. However, he also stated that he had been present at a meeting approximately three weeks earlier when the lead investigator in the Dr. Smith case had updated the team on what he had found out to date.

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As will, he confirmed that members of the investigative team working under him had also assisted with other aspects of the investigation, including those directly involved with Dr. Smith.

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Captain Schneider stated that he had told CFNIS management right at the beginning of the Croatia investigation that, "I was in the court martial with Mr. Smith in Goose Bay", during his tour of duty as officer in charge of the military police section in Goose Bay in the mid-1990's.

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Captain Schneider

He stated that he learned about their existence in the press.

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Captain Schneider states that he made contemporaneous notes of his conversation, which remain in his possession.

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He stated his involvement in the investigation and subsequent court martial of Dr. Smith was limited to his role as the officer in charge of the military police section. He advised that:

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*I was not an active investigator involved, ...I wouldn't even be a case manager, (the investigators) just briefed me on what was happening and then I briefed the Wing Commander...but on the technical direction of the case, I was not involved.*

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He maintained that he had no direct involvement in the investigation, and the decision to lay the charge was not taken by him, but rather involved the Judge Advocate General's office, as was apparently standard procedure up until recently. He does not believe he attended the court martial.

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My staff and I discussed this case in depth as soon as the interview with Captain Schneider was completed. The issue at hand quickly boiled down to whether an objective observer would still have faith in an investigative process that involved these two parties, given all the circumstances that we were aware of. In my opinion there was, at that point, at least a reasonable apprehension of conflict of interest in this case, based on the information adduced from the two statements given to us. I came to the opinion that it would be better for all concerned, and may protect the integrity of this very high profile investigation, that Captain Schneider be assigned to other duties, at least until Dr. Smith's allegation about Captain Schneider's knowledge of the memoranda was investigated by the appropriate authority.

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I decided to informally approach officials within CFNIS to see if this issue could be mediated without formal intervention. I felt it was incumbent on me to take action at this stage, even though we had not concluded our investigation, for several reasons. Firstly, the fact that there was a possibility that an extensive and expensive CFNIS investigation may be irrevocably tainted if it was allowed to continue with Captain Schneider as a participant. Secondly, and equally important, we were concerned

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Further, I felt that bringing our input to the chain of command in an informal manner could obviate the need for a full field, and thus resource intensive, investigation by my Office. To that end, my two senior staff met with the officer in charge of the entire investigation, Inspector Russ Grabb, within hours of the interview with Captain Schneider concluding.

220 Inspector Grabb is a serving RCMP officer currently on secondment to CFNIS, as officer in charge of the Sensitive Investigation cell. He reports through the CFNIS chain of command to the Canadian Forces Provost Marshal (CFPM).

225 My investigators advised him that my Office had spoken to Dr. Smith and Captain Schneider. We advised him, in confidence, of Dr. Smith's allegation that Captain Schneider may have been aware of problems with the documents, which were now the subject of the CFNIS investigation, in 1995.

230 Inspector Grabb stated that he was not previously aware of this information, but nevertheless felt that there was no conflict of interest, for several reasons. He pointed to the fact that Captain Schneider, to his knowledge, was not the subject of any complaint about his conduct in Goose Bay. He explained the structure of the investigation, which he divided into several separate components. He showed us an organizational chart that delineated the separate investigations. He confirmed that Captain Schneider was responsible for the investigation into the alleged naphtha gas poisoning of retired Warrant Officer Matt Stopford and another person, and that Captain Schneider had no involvement in the branch of the investigation relating to Dr. Smith. He also stated that he had discussed this subject with Dr. Smith and his lawyer after an August 13, 1999, CTV news story,

240 My investigators advised him that, in our opinion, there appeared to be at least a *prima facie* perception that there could be a conflict of interest. They pointed out that the information provided by Dr. Smith, regarding Captain Schneider's knowledge of the memos relating to the Croatia deployment, made

245 Captain Schneider a potential witness in the memoranda investigation. They made it abundantly clear that this position was not meant in any way to impugn Captain Schneider or his reputation. Nor were we in any way endorsing what Dr. Smith had told us. My staff informed Inspector Grabb that we had yet to complete our investigation, and we did not know all the facts. Rather we explained, as noted above, we were bringing this information to him in a spirit of informal co-operation and resolution, based on what we had been able to establish to date. We advised that, if the *status quo* continued, we would have no choice but to pursue

250 the matter by conducting a full field investigation into the circumstances.

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260 Inspector Grabb advised that he would seek advice and contact us as soon as possible.

265 The following day Inspector Grabb gave a tape-recorded statement to my investigators. He re-iterated and expanded upon his position given to us the previous day. He advised that he had reflected heavily on this issue and had consulted with various parties, including seeking external legal advice. He stated he had carefully balanced all the issues, including the integrity of the investigation, fairness to all concerned, public interest and investigative strategy. He had concluded, based on all the circumstances, that it would be unfair to remove Captain Schneider from the investigation at this time.

270 He added that Dr. Smith's allegations were subjective assertions unsupported by a

He added that Dr. Smith's allegations were subjective assertions unsupported by a factual basis. He stated that further exploration of the facts was needed,

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He  
280 advised that he could not share that information with us at that time, as the investigation was on going. He stated that, "...it was like asking (me) to respond with one, perhaps one and a half arms tied behind (my) back... There's many things about this case that I'm not allowed to tell you."

285 Inspector Grabb again referred to his belief that Captain Schneider's involvement in the NIS investigation did not touch upon Dr. Smith. However, he did state that the investigations into the destruction of the memos and the investigation into the alleged poisoning of Matt Stopford were not hermetically sealed from each other. He also confirmed that some of the investigators, who were working directly with Captain Schneider on his investigation, were also directly working on the investigation, in which Dr. Smith was at one point a suspect and remains a key witness.

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295 My investigators also raised the possibility of temporarily removing Captain Schneider from the investigation until the complaint about conflict of interest was investigated. Inspector Grabb was not persuaded, and rejected this proposal.

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Inspector Grabb advised us that Captain Schneider was assigned to attend pre-deployment training in Trenton as of August 30, 1999, prior to his pre-scheduled deployment to Kosovo in December 1999

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Inspector Grabb estimated he "would be gone for about eight weeks starting next Monday". There was a clear inference that, although Captain Schneider was officially still part of the investigation, we should be comforted by the fact that he was *de facto* removed from it for a pre-determined period of time in the near future. It should be noted that, at this time, Captain Schneider has returned and has resumed his duties as investigator on the NIS task force.

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I did not view Inspector Grabb's response as an appropriate solution to the issue. I therefore instructed my staff to continue with their investigation.

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Based on this new piece of evidence we again sought an informal resolution of this case by advising Inspector Grabb that Dr. Smith had complained about Captain Schneider

Nevertheless, Captain Schneider remained on the investigation.

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365 We therefore continued our investigation and interviewed several persons who were  
at Goose Bay when the events outlined above took place. It quickly became  
370 apparent that there were two schools of thought as to what happened to Dr. Smith  
and why. As one person interviewed told us, "*there are no neutral parties*".  
375 However, there is some credible evidence to support Dr. Smith's assertion that he  
did go to see Captain Schneider at some point in 1995.

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On October 1, 1999, we received a copy of the letter from Dr. Smith. At 8:45 a.m.  
that same day, a senior investigator spoke to LCol. Don Dixon, the acting CFPM.

To our surprise, we discovered that Captain Schneider remained in charge of his part of the  
NIS investigation. LCol. Dixon stated that Captain Schneider, "*will remain on the  
investigation for the time being.*" He advised he was aware of our conflict of  
interest investigation.

## **Findings and Recommendations**

Under paragraph 19(g) of the *Ministerial Directives*, if the Ombudsman, upon

415 completing his review of the matter under consideration, is of the opinion that steps  
should be taken to achieve substantial and long-lasting improvements to the welfare  
of the military community, he will report his recommendations and opinions and the  
reasons therefore, to the appropriate authority. Furthermore, under paragraph 20, the  
authority will in turn inform the Ombudsman within a reasonable time, as  
determined by the Ombudsman, of all steps taken or proposed to be taken in  
response.

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425 My Office made every attempt to resolve this matter with the CFPM's office by  
informal mediation, prior to commencing a formal investigation. The attempts are  
related, in some detail, under the prior heading. In sum, my staff met with the  
officer in charge of the police investigation and made it very clear at that time what  
the issues were, and how, in the opinion of our office, the continued employment of  
Captain Schneider on the investigative team raised a distinct possibility that  
perceptions of the findings of their entire investigation may be tainted.  
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Nonetheless, senior officials  
decided to keep Captain Schneider as part of the investigative team.

435 It is unfortunate that in this case, attempts at informal resolution were unsuccessful  
and a formal investigation with recommendations was required. Although our  
investigation is continuing, all of the parties directly involved have been  
interviewed and given an opportunity to express their views. The evidence gathered  
and collected to this point however, provides a sufficient picture for me to make an  
informed assessment in this case. Given the high public interest in the continuing  
NIS investigation and in light of my conclusions and recommendations, it was felt  
that I should issue my report on this matter as soon as possible.

445 *Decision and Recommendation on the Conflict of Interest Complaint*

450 The Dictionary of Canadian Law provides that a conflict of interest occurs "*(w)hen a person in a position to effect an official decision has a personal or financial interest in the outcome of a decision.*"<sup>1</sup> Any official with the power to exercise discretion has at least a moral duty to ensure he is not in a position of conflict of interest. When a public official is entrusted with the enforcement of law, there is an even greater duty to ensure that the official is free of both real positions of conflict of interest and perceived situations of conflict of interest. At the heart of issue lies the credibility of the justice process itself. The saying that "perception is reality" in the minds of the public, knows of no more convincing illustration than when one is dealing with the enforcement of law. Indeed, the suspect and the complainant as well as the public must have confidence that matters will only be resolved on the fruits of the investigation and that the thinking process be free from outside influence.

460 I am comforted to note that recent public statements by the Minister of National Defence, and the Chief of Defence Staff (CDS) also indicate that they share a similar position.

465 Indeed, the CDS has remarked that it is of paramount importance that DND/CF's response to the allegations of exposure to toxic substances in Croatia be seen as credible and unbiased. In this context, he was referring to the Board of Inquiry,

credible and unbiased. In this context, he was referring to the Board of Inquiry, which was convened to look at issues related to those being investigated by the CFNIS.

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In a statement at a press conference held on August 10, 1999, the CDS advised that Colonel Howard Marsh, the then president of the Board of Inquiry had "*concluded that a risk of appearance of conflict of interest existed in the management of related issues in 1998/1999. The proposed (change of president) would remove the risk of perceived conflict of interest.*"

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*Lieutenant General Caines indicated that Colonel Marsh was also concerned with the risk that the board's findings would not be perceived as credible by the public. He stated that Colonel Marsh was considering resigning from the Board to prevent this from happening. In the end, it was Colonel Marsh's firm belief that the final report of the Board must be absolutely credible to withstand the scrutiny for decades to come.*

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The Minister of National Defence commented on the same topic at a press conference on the same day:

*Colonel Marsh has now asked to be replaced as the Chairman and a member of that Board of Inquiry following legal advice that he sought and was sought by the Department with respect to perceived conflict of interest. The advice doesn't suggest he has a conflict of interest, it suggests it's arguable, however, and of course Colonel Marsh who is a man of the highest integrity wants, as I and General Baril want, to make sure that the results of the inquiry withstand the highest level of scrutiny, and therefore he has asked to be replaced and both General Baril and I concur in doing that. **Not only must justice be done, it must be seen to be done.** (emphasis added)*

It is also worthy of note that LCol. Roger Strum, a member of the office of the Judge Advocate General who had been appointed as legal advisor to the Board of Inquiry, resigned because of a potential conflict of interest. An announcement was made in a press release dated July 30, 1999, which read, in part:

*LCol. Strum considered his previous temporary duty in Calgary and his role as prosecutor in the court martial of then-Naval Lt. Eric Smith, an individual who may be asked to provide information to the Board. In light of the work plan for the Board, Strum could see the possibility of an appearance of conflict.*

It is clear that the current high profile CFNIS criminal investigation, arising out of a CF deployment to Croatia in 1993, will be microscopically examined by a large number of stakeholders, both inside and outside the DND/CF. When assessing the issue of conflict of interest, the public's right to a fair and unbiased investigation must also be considered. It is clearly in the public interest that the CFNIS investigation can withstand public scrutiny, in order to foster confidence in the integrity of both the CFNIS, and the military justice system as a whole. In her last annual report, the CFPM welcomed this level of public scrutiny, noting that "the

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annual report, the CFPM welcomed this level of public scrutiny, noting that "*the CFPM staff and subordinate units will perform their duties to the highest ethical standards (...) in particular the following values are embraced (...) accountability, integrity/ethics.*"

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The issue that I must then consider is as follows: Is there a *perception* that Capt. Schneider is in a position of conflict of interest given his role as investigator in the Croatian task force?

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The office of the CFPM is of the opinion that there is no potential for any perceived or actual conflict, because Captain Schneider's role in the Task Force precludes him from having a direct or indirect influence or input into that portion of the investigation that directly involves Dr. Smith. I do not accept this suggestion.

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Captain Schneider has access to and indeed continues to attend investigative meetings where Dr. Smith's case is discussed and strategic decisions are taken. In addition, the organizational chart drawn up by Inspector Grabb clearly demonstrates that investigators reporting to Captain Schneider have also been tasked at different times to work on aspects of the investigation that directly relate to Dr. Smith. As both Captain Schneider and Inspector Grabb confirm, Captain Schneider is not hermetically sealed from the other parts of investigation.

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Further, I believe there is clearly a potential nexus between the investigation that Captain Schneider is responsible for and the investigation involving Dr. Smith. Although CFNIS has declined to discuss its investigation with my Office, even though it was given the full opportunity to do so, one cannot rule out that a connection may emerge between the circumstances of the alleged toxic poisoning of retired Warrant Officer Stopford and the recording of medical information throughout the Croatian deployments. This may potentially have some bearing on Dr. Smith's credibility.

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Given

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Captain Schneider's role as an investigator in regards to Dr. Smith's court martial on another matter, there exists, at a minimum, a perception that Captain Schneider may have a vested interest in the current CFNIS investigation. In addition, the situation is compounded and indeed solidified by the legal notice of a civil suit against Dr. Smith

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It is this perception of a vested interest and Captain Schneider's direct access and involvement with the persons charged with an investigation in which Dr. Smith was a potential suspect and is still a key witness, which creates the perception of conflict. Therefore, on an objective basis, in my opinion, there is a perception that Captain Schneider's private interest may collide with the public interest.

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As far as Captain Schneider's removal from the investigation for a period of time due to his pre-deployment this does not, in my view, address the issue of the conflict of interest, nor does it rule out future involvement in the case. Indeed, Captain Schneider appears to have returned to his Task Force duties in late September.

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I wish to state unequivocally, that my findings in no way impugn or seek to impugn the character or reputation of Captain Schneider or anyone else. My assessment of the potential perceived or actual conflict of interest should in no way be taken as an adverse comment on the honesty or integrity of Captain Schneider or his abilities as an investigator or as an adverse comment on anyone else.

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It is not relevant to this assessment, whether Dr. Smith's allegations and complaints about Captain's Schneider's involvement in his Goose Bay Court Martial and his prior knowledge of the Croatia memos are founded. It should be noted, however, that the allegation by Dr. Smith that Captain Schneider knew about the Croatia memos in 1995 deserves independent investigation and does make Captain Schneider a potential witness in the ongoing NIS investigation.

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My decision and recommendation is based solely on the perception of a conflict of interest, based on the totality of the circumstances and the situation of which we are aware. As noted above, to permit Captain Schneider to continue to participate in any aspect of the investigation runs the risk of tainting perceptions of fairness of the entire CFNIS investigation.

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Accordingly, I find that there exists a clear perception of conflict of interest in this case, which, if allowed to continue, may seriously damage the integrity and credibility of the entire NIS investigation.

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I therefore recommend that:

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**Captain Schneider should withdraw forthwith or be removed from any part of the investigation into matters arising from the Croatian deployment.**

*Conflict of Interest Policies and Guidelines*

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There appears to be no written policies and practices defining conflict of interest in situations such as the one outlined above.

The military police are governed by a document entitled '*Military Police Procedures*'. Chapter 1, paragraph 43 reads, in part, as follows:

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*A person may exercise supervisory discretion with respect to the scope, direction and disposition of any investigation if he/she: (...)*

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*d) does not have a personal or illicit interest in the outcome of the investigation.*

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*e) is not subject to the real or apparent influence of a person who may have a personal or detrimental interest in the outcome of the investigation.*

This provision appears to be of little assistance in this case. Similarly, various provisions of the *Canadian Forces National Investigation Service Operating Procedures*, August 1999, contain passing references to conflicts of interests but do not contain any guidance directly on point.

625 do not contain any guidance directly on point.

The *Belzile Report*<sup>3</sup> touched upon the investigation of alleged offences by military police officers. The report recommended that:

630 *We recommend that, whenever the NIS is required to investigate an alleged offence committed by military police personnel, the investigation should be conducted by NIS investigators who do not or are not likely to have a current working relationship with the subject officer.*

635 In my view, it is equally inappropriate to participate in the investigation of any person with whom the investigator has a past relationship that extends beyond mere professional contact.

640 As I pointed out in *The Way Forward, January 1999*, the military is, in many respects, an insular organization, where members are particularly vulnerable, as virtually every aspect of their lives has the potential to be impinged upon by the CF. Members are subject to a Code of Service Discipline. They operate in a hierarchical environment where written rules and regulations govern most aspects of their working, and sometimes, off-duty lives. Given the extent of control, it is particularly important that any scintilla of conflict of interest is avoided in any case dealt with by the military justice system. *The Dickson Report*<sup>4</sup> made several references to the importance of avoiding perceptions of conflict of interest, and many of its recommendations are based on that premise.

650 In other words, because of the unique circumstances to which Canadian Force members are subjected to, there exists, in my view, an enhanced onus on the military justice system to avoid perceptions of conflict of interest.

655 Regardless of the circumstances of this case, it is essential, in my opinion, that the CFNIS and military police have clear conflict of interest guidelines. I appreciate that these guidelines may not be able to deal exhaustively with every fact situation that arises. However, it is important that they are as comprehensive as possible, in order to ensure that all members are aware of potential conflicts of interest, and how to deal with them.

660 Such guidelines should reflect the reality that given the importance of the public duties carried out by CFNIS and military police officers, where there is a potential for any perceived or actual conflict, they should always err on the side of caution.

665 I therefore recommend that:

670 **The CFPM should establish complete and binding conflict of interest guidelines for personnel under her command.**

675 *Determinations of Conflict of Interest*

It will undoubtedly be in the best interests of the CFNIS, in any instance where there is a complaint regarding conflict of interest in an investigation, that CFPM report the circumstances to an external agency. The office of the Ombudsman is

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report the circumstances to an external agency. The office of the Ombudsman is uniquely positioned to act as this body. It can offer the expertise and the level of confidentiality required to deal with the issues. We are proposing to exercise our "sounding board" function as per paragraph 1 of the *Ministerial Directives* to assist the CFPM in making determinations as to whether a potential for the perception of conflict exists. Referrals should be made in situations when any party, in respect of an investigation, makes such an allegation.

The recommendation we are proposing in this respect would contribute to further the confidence in the operations of the CFPM's office. Ultimately, it will also contribute to substantial and long lasting improvements to the welfare of members of the DND/CF community.

The recommendation would be consistent with other efforts by DND/CF managers and leaders to increasingly scrutinize situations where employees and members may be in positions of conflicts of interest. For example, recently the Chief of Review Services (CRS) issued an unclassified CANFORGEN 083/99 CRS 0027 041536Z OCT99 reminding members of their requirement to disclose in a confidential report, among other things, benefits or outside activities that could come in conflict with their official duties and responsibilities. The CANFORGEN also provides for a process to follow in order to take "*corrective action if the results indicate a need for it*" .

Therefore I recommend that:

**The CFPM should report to the Ombudsman any case where there is a complaint concerning an alleged conflict of interest by any member involved in an investigation. The Ombudsman will make a determination and advise the CFPM of his/her recommendation(s) accordingly.**

## **Summary of Recommendations**

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I. **Captain Schneider should withdraw forthwith or be removed from any part of the investigation into matters arising from the Croatian deployment.**

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II. **The CFPM should establish complete and binding conflict of interest guidelines for personnel under her command.**

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III. **The CFPM should report to the Ombudsman any case where there is a complaint concerning a conflict of interest by any member involved in an investigation. The Ombudsman will make a determination and advise the CFPM of his/her recommendation(s) accordingly.**

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<sup>1</sup> Dukelow D.A. and Nuse B., *The Dictionary of Canadian Law*, Carswell, 1991, at page 196.

<sup>3</sup> Report of the Military Police Services Review Group, December 1998.

<sup>4</sup> Report of the Special Advisory Group on Military Justice and Military Police Investigation Services, March 1997.







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